

Governor's Office Issues Emergency Rules to Establish Capital Investment Fund After Significant Public Input

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(Augusta) – The Governor's Office of Health Policy and Finance has issued emergency rules to establish the Capital Investment Fund (CIF). A major component of the Dirigo Health Reform Act, the CIF plans for expenditures on costly health care facilities, equipment and new services. The rule applies to projects proposed by hospitals and non-hospital health care facilities requiring Certificate of Need (CON) approval. Coupling the CIF and new criteria governing the CON program put forth in the just-released State Health Plan will help ensure future investments strategically meet health care needs and are not too costly for payers.

The CIF has been adopted on an emergency basis following significant public input and analysis of health care costs. During the public comment period for the proposed rule from June 29 to July 9, 2004, business leaders, consumers, and a major hospital system urged an expedited implementation of the rule. And, the Governor's Office determined that health care costs in Maine are growing faster than Maine's income can afford them. Between 1996 and 2002, for instance, the cost of a family policy for Maine businesses and employees increased by 77%, while median household income increased by only 6%; increases for small businesses have been even steeper.

In addition, while Maine's age of plant in its hospitals is "younger" than the Northeast and similar to the United States, there is high growth in capital expenditures. In fact, in the 8 weeks following the lifting of the one-year CON moratorium on May 5th that was established by Governor Baldacci, Letters of Intent seeking CON approval and the costs of those projects were submitted at an unprecedented rate – 67% above the usual volume; or, \$214 million over 8 weeks compared to an average annual approval of \$63 million a year between 1996 and 2002.

"We determined to implement the Capital Investment Fund immediately in part based on our concerns that in 8 weeks the Department of Health and Human Services had over \$214 million in requests for CON approval," said Trish Riley, Director of the Governor's Office of Health Policy and Finance. "The Capital Investment Fund is required to ensure that we invest thoughtfully. It will not stifle innovation or availability of needed services and technology; rather, when coupled with the new criteria for the CON program, it will ensure thoughtful investments that we can afford and that meet the needs of Maine people."

The criteria setting up the Capital Investment Fund are based on actual spending over the last 5 years adjusted for variations in wages and case mix and adjusted to compare rates of growth in in-patient and out-patient costs to New England. The Fund is also adjusted by a factor to reflect the growth in health care costs compared to the growth in Maine's income. The Capital Investment Fund is divided into funding for large and small projects and for hospital and non-hospital projects. The costs of large projects can be allocated over a number of years; thereby assuring that one project will not take all the money in a single year.

"The decision to go to emergency rulemaking was based on an analysis of the sudden growth in applications and their costs and in response to a public hearing in which business leaders, consumers, and a major hospital system sought emergency action. The rules are major and substantive and require legislative approval," said Riley. "We do not take lightly the decision to go to emergency rulemaking before legislative action. However, we believed the emergency was so great and the need for discipline so obvious that it required our action today. We will continue our regular rulemaking process and present provisionally adopted CIF rules to the Legislature in January for their action."

While Certificate of Need review is triggered by the cost of the initial investment – \$2.4 million for capital expenditures; \$1.2 million for new technologies and equipment; or, the offering of new services totaling more than \$110,000 – the Capital Investment Fund relates to the third-year operating costs of the project, not the initial investment.

Projects currently under review by the Department of Health and Human Services will continue to be reviewed under the current system and will not be subject to the Capital Investment Fund. Those include Mercy Hospital's Phase 1 proposal for a replacement hospital; MaineGeneral's proposal for ED renovations; Eastern Maine Medical's proposal for a cogeneration plant; Calais Hospital's proposal for a replacement hospital and several others. However, these projects still are subject to Certificate of Need review and approval prior to proceeding.